BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

| In re Applications of |) | MM Docket No. 93-56 |
|-------------------------------------|----|-----------------------|
| CHESTNUT BROADCASTING COMPANY |) | File No. BRH-900604YE |
| For Renewal of License of |) | |
| Station KBER-FM, Ogden, Utah |) | |
| and |) | |
| STREET STRYDER |) | File No. BRH-900601A3 |
| For Renewal of License of |) | |
| Station KIIII-FM Spanish Fork IIIah | ١. | |

To: Administrative Law Judge John Frysiak

MOTION TO AMEND CAPTION

Street Stryder, by his attorneys, hereby requests he and Station KUJJ-FM, Spanish Fork, Utah, be deleted from the caption in this proceeding. Through the attached Memorandum Opinion and Order, DA 94-1173 (released October 26, 1994), Mr. Stryder's application to assign Station KUJJ-FM to Bajamar Broadcasting, L.L.C. on a distress sale basis was granted. As reflected in Bajamar's letter to the Commission of November 15, 1994, a copy of which also is attached, the assignment was consummated on November 15, 1994. Thus, this proceeding may be terminated as to Mr. Stryder and Station KUJJ-FM, and the above caption should be amended accordingly.

No. of Copies rec'd List A B C D E Respectfully submitted,

STREET STRYDER

Harry C. Martin

His Attorney

Reddy, Begley, Martin & McCormick 1001 22nd Street, N.W., Suite 350 Washington, D.C. 20037

November 23, 1994

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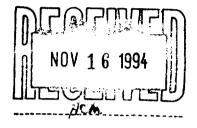
*ADMITTED IN VA ONLY

November 15, 1994

OF COUNSEL ROBERT BENNETT LUBIC

FAX: (202) 686-8282

Mr. William F. Caton Acting Secretary Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554



Re: KUJJ-FM, Spanish Fork, UT File No. BALH-940119GE

Dear Mr. Caton:

You are hereby advised that the above-referenced assignment of license of Station KUJJ-FM, Spanish Fork, Utah, from Street Stryder to Bajamar Broadcasting, L.L.C. was consummated on November 15, 1994.

An Ownership Report (FCC Form 323) reflecting the current ownership will be timely filed.

Should further information be desired in connection with this matter, please communicate with this office.

Very truly yours,

Robert L. Olender

Counsel for

BAJAMAR BROADCASTING, L.L.C.

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Before the Federal Communications Commission Washington, D.C. 20554

MM Docket No. 93-56

In re Applications of

CHESTNUT

File No. BRH-900604YE

BROADCASTING

COMPANY

For Renewal of License of Station KBER-FM, Ogden, Utah

STREET STRYDER

File No. BRH-900601A3

For Renewal of License of Station KUJJ-FM¹ Spanish Fork, Utah

STREET STRYDER

File No. BALH-940119GE

Assignor

and

BAJAMAR BROADCASTING, L.L.C. Assignee

For Consent to Assignment of Station KUJJ-FM Spanish Fork, Utah

MEMORANDUM OPINION AND ORDER

Adopted: October 19, 1994; Released: October 26, 1994

By the Chief. Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it a Petition for Distress Sale Relief filed January 18, 1994, by Street Stryder ("Stryder"); and an Application for Consent to the Assignment of Station KUJJ-FM from Stryder to Bajamar Broadcasting, L.L.C. ("Bajamar"). Stryder seeks permission to assign the KUJJ-FM license to Bajamar pursuant to the Commission's minority distress sale policy. We will grant Stryder's request.

BACKGROUND

- 2. By Hearing Designation Order and Notice of Forfeiture, 8 FCC Red 2493 (1993), the Commission designated for hearing the applications for renewal of license of C. Devine Media, Inc.³ ("Devine") and of Stryder, on the following issues:
 - (a) to determine whether Devine and Stryder violated Section 73.3555(a)(2) of the Commission's Rules by engaging in a sham assignment of the license of Station KQOL-FM, Spanish Fork, Utah, from Devine to Stryder;
 - (b) To determine whether Stryder violated Section 73.3540 of the Commission's Rules and Section 310(d) of the Communications Act by engaging in an unauthorized assignment of the license of Station KOOL-FM to Steve Evans, the brother-in-law of Chris Devine, one of the principals of C. Devine Media, Inc...
 - (c) To determine whether Devine and Stryder violated Sections 73.1015 and 1.17 of the Commission's Rules by making misrepresentations to the Commission concerning the foregoing:
 - (d) To determine, in light of the evidence adduced under the foregoing issues, whether Devine and Stryder possess the requisite qualifications to warrant the grant of the applications for renewal of the licenses of Station KBER-FM and KQQL-FM.
- 3. The Commission's general policy is that, where, as here, character qualifications issues have been designated against a licensee in a renewal or revocation hearing, the license cannot be assigned until the licensee is found qualified. Jefferson Radio Co. v. FCC, 340 F.2d 781 (D.C. Cir. 1964) In Statement of Policy on Minority Ownership of Broadcast Facilities, 68 LCC 2d 979 (1978), the Commission established an exception to that proscription to allow distress sales to minority controlled entities. In order to qualify for distress sale relief, an applicant must satisfy three main criteria: i) that the hearing has not vet commenced; 2) that the proposed transferee is minority controlled; and 3) that the station to be conveyed is sold at a maximum of 75% of its fair market value. Lee Broadcasting Corp., 76 LCC 2d 462 (1980): Clarification of Distress Sale Policy, 44 RR 2d 479 (1978); Statement of Policy. The buyer and seller are each required to submit an appraisal of the fair market value of the station. Lee Broadcasting Corp.

DISCUSSION

4. The parties have met the threshold criteria for relief by distress sale. First, the hearing has not yet commenced. Second, Bajamar, the assignee, is minority controlled. Bajamar is a limited liability company organized under the laws of the state of Utah Such a company affords its principals the same legal protections as a corporation, but is treated like a partnership for income tax purposes. Bajamar's manager and 21% owner. William J. Garcia, is Hispanic Garcia has 51% voting control of Bajamar. See

Formerly KOOL-FM.

See Faith Center, Inc., 54 RR 2d 1286, 1287 n.11 (1983); Minority Ownership in Broadcasting, 92 FCC 2d 849, 859 (1982).

⁴ C. Devine Media, Inc. later changed its name to Chestnut Broadcasting Company ("Chestnut"). Chestnut has petitioned for distress sale relief as we I. That petition is pending.

Minority Ownership in Broadcasting, at 854. Finally, the parties have shown that the sale price for KUJJ-I-M is 75% of its fair market value.

- 5. The parties have submitted two appraisals of the stations by recognized media brokerage firms. One appraisal is by Blackburn & Co., Inc., and the other is by Star Media Group, Inc. Both value the station at \$500,000 on the date of designation of the above-captioned proceeding for hearing. The total consideration to be paid under the sales contract is \$375,000, which is 75% of the appraised value.
- 6. Stryder will provide seller financing for two-thirds of the \$375,000 purchase price through a promissory note to be executed by Bajamar at closing. The rate of interest on the note is 10%. Both appraisals indicate that this interest rate is reasonable. Moreover, the contract provides that the seller will not retain a right of reversion, and will not have a right to reassignment of the station or a right to use the facilities. Under such circumstances, we do not consider execution of the promissory note to be a bar to approval of distress sale relief in this case.
- 7. The parties have disclosed all the facts and circumstances regarding the distress sale agreement, including the negotiations relating thereto and the consideration to be exchanged. KND Corp., 48 RR 2d 631, 634 (1980). The assignment application has been processed. The assignee has been found fully qualified to be a Commission licensee.

ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED. That the Petition for Distress Sale Relief filed January 18, 1994, by Street Stryder IS GRANTED; And That the Application for Consent to the Assignment of Station KUJJ-EM from Stryder to Bajamar Broadcasting, L.L.C. (File No. BALH-940119GE) IS GRANTED. IT IS FURTHER ORDERED, That the application for renewal of license of KUJJ-EM (BRH-900601A3) IS GRANTED and this proceeding IS TERMINATED, as it pertains to Stryder and KUJJ-EM only, provided that if the pending assignment to Bajamar is not consummated within 90 days, the action taken herein shall be void and the renewal application for KUJJ-I M will be returned to hearing status.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart

Chief. Mass Media Bureau

CERTIFICATION OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 23rd day of November, 1994, copies of the above-referenced MOTION TO AMEND CAPTION were hand-delivered or mailed, first-class, postage prepaid, to the following:

Administrative Law Judge John M. Frysiak* Federal Communications Commission 2000 L Street, N.W., Room 223 Washington, D.C. 20554

Ms. Paulette Laden Federal Communications Commission Mass Media Branch 2025 M Street, N.W., Room 7212 Washington, D.C. 20554

Aaron Shainis, Esquire Shainis & Peltzman 2000 L Street, N.W., Suite 200 Washington, D.C. 20036